

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

OLD NATIONAL BANK, )  
Plaintiff, )  
v. ) CAUSE NO.: 1:04-CV-371-TS  
PLATINUM CAPITAL, LLC; UNITED STATES )  
OF AMERICA, SMALL BUSINESS )  
ADMINISTRATION, as successor in Interest to )  
INDIANA STATEWIDE CERTIFIED )  
DEVELOPMENT CORPORATION; WABASH )  
COUNTY FARM BUREAU CREDIT UNION, )  
Defendants. )  
UNITED STATES OF AMERICA, )  
Cross/Counter/Third-Party Plaintiff, )  
v. )  
OLD NATIONAL BANK, )  
Counter-Defendant, )  
PLATINUM CAPITAL, LLC; WABASH )  
COUNTY FARM BUREAU CREDIT UNION, )  
v. )  
NX COMMUNICATIONS, LLC; SCOTT A. LINN; )  
JAMES CRAMER; EARNEST INVESTMENTS, )  
Third-Party Defendants. )

## OPINION AND ORDER

This matter is before the Court on a Motion to Amend Petition for Removal filed by the United States on July 20, 2005, to reflect the proper statutory authority for this Court's subject matter jurisdiction.

The Petition for Removal, filed on October 5, 2004, states that the action was removed pursuant to 28 U.S.C. §§ 1441 and 1446 "for the reason that pursuant to 28 U.S.C. § 1346 the district court has jurisdiction over plaintiff's claim for the foreclosure of certain real estate located at 101 South Washington Street, Marion, Indiana 46952." (Pet., ¶ 3.) On July 14, 2005, the Court held a telephone conference with the parties to discuss subject matter jurisdiction. The Court advised the parties that it did not believe that jurisdiction existed under 28 U.S.C. § 1346 because the claim exceeded \$10,000. The Court invited the government to file a memorandum regarding jurisdiction.

On July 20, 2005, the United States filed its Motion to Amend and its proposed amended petition, clarifying that jurisdiction was proper under 28 U.S.C. § 1444. Section 1444 provides that "[a]ny action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending." The original petition failed to invoke either § 1444 or § 2410, and erroneously invoked § 1346. The amended petition corrects these deficiencies.

Because the underlying action names an agency of the United States and involves foreclosure of a mortgage on real property on which the United States also has a mortgage, this Court has subject matter jurisdiction. *See* 28 U.S.C. § 2410 ("Under conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter . . . to foreclose a mortgage or other lien upon, real or personal property on which the

United States has or claims a mortgage or other lien.”).

For the foregoing reasons, the Court GRANTS the government’s Motion to Amend Petition for Removal [DE 23]. The telephone status conference scheduled for August 8, 2005, is VACATED.

SO ORDERED on July 21, 2005.

s/ Theresa L. Springmann  
THERESA L. SPRINGMANN  
UNITED STATES DISTRICT COURT